

DOCKET NO. 95-661-C - ORDER NO. 95-1734 ✓

IN RE: Petition of AT&T Communications of)
 the Southern States, Inc. Requesting)
 Alternative Regulation of Certain)
 Services in South Carolina.)
)
)

ORDER
ADDRESSING
REQUEST FOR
ALTERNATIVE
REGULATION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Petition, filed March 17, 1995, by AT&T Communications of the Southern States, Inc. ("AT&T" or "the Applicant") whereby AT&T seeks approval of alternative regulation of certain services as provided by S.C. Code Ann. §58-9-585 (Supp. 1994). By its Petition, AT&T requests alternative regulation for its business long distance services and for its consumer card and operator services. AT&T explained in its Petition that it seeks modification of the regulation of its business long distance services and consumer card and operator services by (1) declaring these services competitive; (2) removing the application of price caps to these services; (3) treating tariffs filed for these services, and all other new business or consumer card or operator services, as presumptively valid after one day; and (4) eliminating the IXC Information Report.

Subsequent to the filing of the Petition, the Commission's

Executive Director instructed AT&T to cause to be published a prepared Notice of Filing, one time, in newspapers of general circulation in the areas affected by the Petition. The purpose of the Notice of Filing was to inform interested persons about the Petition and to instruct interested persons of the manner and time in which to file pleadings for participation in the proceedings. AT&T duly complied with the instructions of the Executive Director and submitted Affidavits of Publication as proof.

Petitions to Intervene were received from the following: Southern Bell Telephone and Telegraph Company ("Southern Bell"); Consumer Advocate for the State of South Carolina ("the Consumer Advocate"); GTE South, Incorporated ("GTE"); South Carolina Telephone Association ("SCTA"); South Carolina Telephone Coalition ("SCTC"); James Tennant; MCI Telecommunications Corporation ("MCI"); and Sprint Communications Company L.P. ("Sprint").

On or about May 23, 1995, the Commission served a Notice of Hearing on all parties of record, indicating that a hearing on the instant Petition would be commenced on Monday, August 7, 1995. By Order No. 95-788, dated March 29, 1995, the Commission directed AT&T to prefile its testimony and exhibits on or before July 10, 1995, and required all other parties to prefile their testimony and exhibits on or before July 24, 1995.

A public hearing on AT&T's Petition was commenced before the Commission on August 7, 1995. The Honorable Rudolph Mitchell, Chairman, presided. Francis P. Mood, Esquire and Roger A. Briney, Esquire appeared on behalf of AT&T; Harry M. Lightsey, III,

Esquire and Doug Lackey, Esquire appeared on behalf of Southern Bell; Elliott F. Elam, Jr., Esquire and Jill Andrews, Esquire appeared on behalf of the Consumer Advocate; William F. Austin, Esquire appeared on behalf of GTE; M. John Bowen, Jr., Esquire and Margaret M. Fox, Esquire appeared on behalf of the SCTA and the SCTC; James Tennant appeared pro se; Martha McMillan, Esquire appeared on behalf of MCI; and Florence P. Belser, Staff Counsel appeared on behalf of the Commission Staff. Sprint did not appear at the hearing.

At the hearing, L. G. Sather and Dr. David L. Kaserman presented testimony on behalf of AT&T. Allen G. Buckalew testified on behalf of the Consumer Advocate, and H. Keith Oliver presented testimony on behalf of The SCTC. James Tennant testified for himself. Dr. R. Glenn Rhyne presented testimony on behalf of the Commission Staff. At the conclusion of AT&T's case, the Consumer Advocate made a Motion to Dismiss AT&T's Application. The Consumer Advocate stated that its Motion was based on the failure of AT&T to meet its burden of proof in that AT&T did not provide market share information for services in South Carolina. The Consumer Advocate's Motion to Dismiss was joined in by the SCTC. The Commission took the Motion to Dismiss under advisement.

II. DESCRIPTION OF REQUEST

By its Petition of March 17, 1995, AT&T requested the following four (4) regulatory changes:

1. AT&T requests that all of the business services offered in its Private Line Services Tariff, Custom Network Tariff, and

all Consumer Card and Operator Services tariffs be declared competitive by the Commission and no longer subject to the tariff approval process. Additionally, AT&T requests that the same regulatory treatment be applied to all future services in these areas.

2. The Company requests that the Commission remove all price caps presently imposed on AT&T's prices. AT&T argues that competition in the market place regulates prices today and will continue to discipline prices.

3. AT&T requests that it be permitted to implement tariff changes by filing with the Commission informational tariffs, setting forth price lists for services. AT&T has requested that these tariffs become effective on one day notice to the Commission and that the requirement to provide notice to newspapers be discontinued. AT&T argues that elimination of the requirement of the Commission to approve tariffs before becoming effective will reduce Commission cost and will enable AT&T to implement price changes and services in quick response to the market.

4. AT&T states its belief that the information reports setting forth financial data on AT&T's South Carolina Operations are no longer necessary to protect South Carolina consumers and requests that the Commission eliminate the requirement for filing the IXC information report. Given the competitive nature of the interexchange market, the Company notes that costs are generated in preparing these reports, both by AT&T and the Commission in preparing and reviewing them, respectively, which could be saved

by elimination of the reports.

AT&T's Petition was filed pursuant to S.C. Code Ann. §58-9-585 (Supp. 1994). S.C. Code Ann. §58-9-585 (Supp. 1994) provides in relevant part:

(A) Notwithstanding any other provision of this chapter, the commission, on the request of an interexchange telecommunications carrier or on its own motion, may consider, in lieu of the procedures outlined in this chapter, alternative means of regulating that carrier. If the commission first determines, after notice and hearing, that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market, the commission may implement regulatory alternatives including, but not limited to, the provisions outlined in this section.

(B) If the commission determines that an interexchange telecommunications carrier service is competitive, the commission shall not fix or prescribe the rates, tolls, charges, or rate structures for that service. In determining whether a service is competitive, the commission shall consider, at a minimum, the availability, market share, and price of comparable service alternatives. The commission shall require that the interexchange telecommunications carriers file and maintain price lists for competitive telecommunications services.

Additionally, S.C. Code Ann. §58-8-585 (Supp 1994) authorizes the Commission to "reclassify a telecommunications service ... as noncompetitive if ... the substantial evidence of record shows that sufficient competition does not exist for that service" and to "implement other regulatory alternatives including, but not limited to, price caps" for the services found to be noncompetitive. S.C. Code Ann. §58-9-585 (C) and (D) (Supp. 1994).

The present case is the first request for alternative regulation involving an interexchange carrier under S.C. Code Ann.

§58-9-585. While S.C. Code Ann. §58-5-585 provides that the Commission may implement regulatory alternatives for interexchange telecommunications carriers whose service or services are found to be competitive, the statute does not define "competitive." However, the statute does require the Commission to consider "at a **minimum**" the variables of "availability, market share, and price of comparable service alternatives" in the Commission's determination of whether a service is competitive. S.C. Code Ann. §58-9-585(B) (Supp. 1994) (Emphasis added.)

III. SUMMARY OF TESTIMONY

In support of its Petition, AT&T presented the testimony of Dr. David L. Kaserman. Dr. Kaserman's testimony was offered to provide an economic framework from which the Commission could evaluate the market conditions that come to bear on the degree of regulation appropriate for long distance firms operating within South Carolina. Dr. Kaserman presented his direct testimony in six (6) components. He discussed how the public interest could be served by market forces rather than through direct price regulation when effective competition exists within a given market. Dr. Kaserman explained the economic determinants (such as market share, entry barriers, and demand characteristics) of the intensity of competition confronted by individual firms within a market, and he discussed the significance of market definition, empirical evidence related to the intensity of competition faced by AT&T, and the policy implications of these conclusions. Dr. Kaserman concluded that, in his opinion, a substantial relaxation of regulatory

controls over the pricing decisions of AT&T is in the public interest and that the AT&T filing is fully supported on economic grounds.

L. G. Sather's testimony was intended to address the competitive nature of the interexchange telecommunications market. Mr. Sather's testimony discussed AT&T's request for alternative regulation of certain services within South Carolina. Mr. Sather requested that the Commission approve AT&T's Petition and allow the forces of competition to regulate the IXC's within the State.

The Consumer Advocate's witness, Allen G. Buckalew, testified that AT&T's proposed plan needed to be modified so that it would benefit the general body of ratepayers and would provide continuing benefits to consumers and so that there would be some protection against excessive earnings. Mr. Buckalew stated that the proposal suggested by AT&T suffers from several weaknesses. According to Mr. Buckalew, AT&T has not demonstrated that workable competition exists in the markets that AT&T wants deregulated. Mr. Buckalew suggested a plan with more structure and predetermined requirements for moving through the market conditions phases toward competition. His proposal would have the Commission create three (3) baskets in which to classify AT&T's services: (1) Noncompetitive; (2) Emerging Competitive; and (3) Competitive. Mr. Buckalew also stated that a more structured information reporting system, which would include information on market share, is needed.

H. Keith Oliver testified on behalf of the SCTC. Mr. Oliver stated that the SCTC has concerns about the effects of a lack of

oversight on the provision of services in less densely populated and rural high-cost areas of the state as well as its impact on smaller, low-volume users. According to Mr. Oliver, the SCTC believes that the Commission must not approach deregulation on a "patchwork" basis but must look at how regulation has protected small users and rural areas and decide whether such protection is in the public interest and if so, how to keep those protections in place. Mr. Oliver also stated that AT&T is the only interexchange carrier in South Carolina that has deaveraged its toll rates, and he expressed concerns that approval of AT&T's Petition would aggravate the issue of deaverage toll, resulting in increased rates for small and rural customers.

James M. Tennant testified on behalf of himself. Mr. Tennant testified that in today's society public access to information is critical. Mr. Tennant encouraged the Commission to study his 811/CSS proposal for a national information infrastructure. Mr. Tennant also stated that he is in favor of full, open, and fair competition.

Dr. R. Glenn Rhyne testified on behalf of the Commission Staff. Dr. Rhyne's testimony addressed the concept of workable competition in general and also examined the idea of workable or effective competition as it relates to AT&T in South Carolina. Dr. Rhyne stated that adequate data was not made available on a South Carolina basis to conduct a complete analysis of the degree of competition of AT&T's business services. Dr. Rhyne recommended that a process be established for South Carolina which would afford

the Commission the opportunity to monitor and evaluate outcomes resulting from any alternative regulatory procedure.

IV. FINDINGS AND CONCLUSIONS

The Commission has considered the foregoing and the entire record of this proceeding in light of S.C. Code Ann. §58-9-585 (Supp. 1994) which provides for alternative means of regulating interexchange telecommunications carriers. The Commission notes that as a prerequisite to granting relief under §58-9-585, the Commission must first determine that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market. After reviewing the record of this case, the Commission believes and concludes that the substantial evidence of record does not show or support a finding that AT&T's services for which it seeks alternative regulation are competitive. The Commission concludes that AT&T has not met its burden of proof as described under the statute with regard to any of its services. Therefore, the Commission finds that it cannot grant relief under S.C. Code Ann. §58-9-585 (Supp. 1994) as requested by AT&T.

However, as the Commission first noted in Order No. 84-622, issued August 2, 1984, in Docket No. 84-10-C, "competing carriers require flexibility to adjust rapidly rates and charges for their services in response to changes in the market place." (Order No. 84-622 at p. 23.) Subsequent to that comment, the Commission established in Order No. 84-622 a maximum rate structure, which incorporated a maximum rate level with a flexibility for downward adjustment. (Order No. 84-622 at p. 24.) In Order No. 84-622, the

Commission held that any proposed increase in the maximum rate levels reflected in the tariffs of an interLATA carrier which would be applicable to a carrier's general body of subscribers would constitute a general ratemaking proceeding, which would be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540. (Order No. 84-622 at p. 25.)

Despite the Commission's conclusion that the requirements of S.C. Code Ann. §58-9-585 have not been met in this case, the Commission continues to believe, as it stated in Order 84-622, in the necessity for flexibility of interexchange carriers to adjust rapidly the rates and charges for their services in response to changes in the market place. The Commission observes that Order No. 84-622 has never been overturned on appeal and, therefore, is the law in South Carolina, as the findings of this Commission have the force and effect of law. See, Hamm v. American Telephone and Telegraph and South Carolina Public Service Commission, 302 S.C. 210, 394 S.E.2d 842 (1990).

The Commission notes with interest the language of S.C. Code Ann. §58-9-720 (1976), which states in part: "[t]he Commission may, upon its own motion ..., ascertain and fix just and reasonable ... regulations, practices ... to be furnished, imposed, observed and followed by any and all telephone utilities ..." The Commission holds that this statute authorizes the Commission to consider the regulation of AT&T and to modify, if the Commission deems warranted, the described procedure and rate structure prescribed in Order No. 84-622. This decision of the Commission is not made

pursuant to S.C. Code Ann §58-9-585, but is made pursuant to the same general regulatory authority of the Commission under which Order 84-622 was rendered.

The Commission believes, and so concludes, that a partial modification of the maximum rate structure of Order No. 84-622 is advisable in order to allow "competing carriers the flexibility to adjust rapidly rates and charges for their services in response to changes in the market place. Order No. 84-622 at p. 23. However, the modification of the maximum rate structure is dependent upon AT&T filing tariffs which will reflect average toll rates within South Carolina. If AT&T elects to file tariffs which reflect average toll rates within South Carolina then the methodology contained in Order No. 84-622, dated August 2, 1984, in Docket No. 84-10-C, will be modified to remove the maximum rate requirements on business services offered under the AT&T Private Line Service Tariff, Custom Network Service Tariff, and all Consumer Card and Operator Service Offerings. The Commission will continue its other regulatory authority over the aforementioned services. Further, this modification of Order No. 84-622 will be implemented on a trial basis until further notice. The Commission also holds that Staff shall develop a monitoring process to include the information needed to review this process.

The Commission also holds that a fourteen (14) day notification requirement is proper and should continue. The notification requirement shall continue to include notice to the Commission and also public notice. Should intervention be received

during the fourteen (14) day period, the burden will be on AT&T to show that approval or adoption of the tariff is in the public interest. If no intervention is received, and all other requirements are met, then under this procedure the tariffs will be presumed valid after the expiration of the fourteen (14) day period.

With regard to AT&T's request to eliminate the filing of the IXC information report, the Commission holds that this decision shall be left to the Commission Staff to determine whether this reporting requirement shall continue. Staff shall consider whether the IXC information report will continue under the monitoring process which, pursuant to this Order, Staff is charged with developing.

Again, the Commission emphasizes that the holding of this Order does not fall under the auspices of S.C. Code Ann. §58-9-585, but rather under this Commission's authority under Order No. 84-622 and the general statutory authority reflected in S.C. Code Ann. §58-9-720 (1976). We further emphasize that the modification of the procedures under Order No. 84-622 is being instituted on a trial basis, and the Commission reserves the right to modify, eliminate, or continue the procedure at its discretion.

Based on the findings and conclusions herein, the Commission hereby denies the Motion to Dismiss of the Consumer Advocate and the SCTC.

IT IS THEREFORE ORDERED THAT:

1. Upon the filing of tariffs which reflect average toll

rates within South Carolina, the tariff filing procedures will be modified to remove the maximum rate (cap) requirements on business services offered under the AT&T Private Line Service Tariff, Customer Network Service tariff, and all Consumer Card and Operator Service Offerings. The Commission will continue its other regulatory authority concerning these services.

2. The modifications to Order No. 84-622 as stated herein are approved on a trial basis.

3. Staff is directed to develop a monitoring procedure to include the information needed to review this process. Staff shall also consider the IXC information report and whether the requirement of such IXC information report should continue.

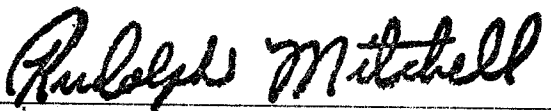
4. The fourteen (14) day notification requirement for tariff changes shall continue, including the requirements for notice to the Commission and notice to the public.

5. The Commission specifically reserves the right to modify, eliminate, or continue the procedures contained herein in the discretion of the Commission.

6. Based on the conclusions as stated herein, the Motion to Dismiss the Application by the Consumer Advocate and the SCTC is denied.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)

CONCURRING OPINION OF COMMISSIONER C. DUKES SCOTT

I concur with the decision of the majority in this case, particularly in so far as it allows for the removal of the maximum rates from AT&T's business line services contingent upon the reaveraging of long distance rates.

The action by the Commission merely modifies, on a trial basis, a methodology for the regulation of long distance carriers which has been in effect for over 11 years. This methodology was approved by Order Number 84-622 in Docket Number 84-10-C issued on August 2, 1984. This is not a deregulation of the business long distance services, credit card or operator services of AT&T as is permitted in Section 58-9-585 of the Code of Laws of South Carolina (1976).

However, this is a significant step forward in the regulatory

process for an industry which has approximately 195 providers in South Carolina. This will give AT&T the flexibility, and perhaps the incentive, needed to introduce new services and to respond to the market place.

The customers will be protected in several ways. First, AT&T must give notice to the public and to the Commission 14 days before the effective date of any rate change. A customer, the Commission Staff, or any other interested party can petition the Commission to review the rate. In this event, AT&T will have the burden of proving that the rate is in the public interest. The public is further protected in that there are approximately 195 other providers of business long distance services should AT&T's rates exceed rates which consumers view as reasonable and fair.

Since divestiture, the Commission has not regulated AT&T, or any other long distance company, under the traditional rate of return methodology as it has local exchange companies. The relaxed methodology of allowing the long distance company to adjust rates with 14 days' notice, has been in effect virtually since there has been long distance competition and since divestiture. This is not a change in the traditional rate of return regulation. There has not been a rate of return case involving a long distance company since divestiture.

If we expect AT&T to introduce new business services in South Carolina and to make investments in South Carolina, I believe that the decision of the Commission is an appropriate one.

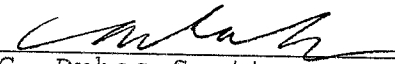
The Commission's decision by this Order merely modifies a

procedure which was instituted by an Order of the Commission and not by statute or regulation. It is an interim procedure, subject to review and monitoring, which I believe will benefit both the consumer and AT&T. Competition will not occur overnight, and likewise, the move from a fully regulated state to a deregulated state will need some transition. The procedure approved by the Commission in this Order will aid in this transition, which will occur when the level of competition is sufficient to meet the requirements of Section 58-9-585. Section 58-9-210 which requires that all telephone utility rates be just and reasonable will be enforced. Regulatory authority is maintained.

Because the markets may develop in this transition period differently in metropolitan areas than in rural areas, the requirement for average rates is essential. This will provide protection to the rural areas.

Although I supported the requirement of changes being published in the newspapers and the 14 day notice requirement, I believe the notice requirement could be reduced to seven days and the publication can be done in a manner which could be less expensive and burdensome to the utility.

Respectfully submitted,



C. Dukes Scott
Commissioner, Second District

DISSENTING OPINION OF COMMISSIONER WARREN D. ARTHUR, IV

I have voted against the motion and decision on the Petition and Request of AT&T for Alternative Regulation. AT&T's Petition was filed solely under and pursuant to Section 58-9-585 of the South Carolina Code of Laws (1994). This Code section clearly states that the Commission must first determine, "after notice and hearing, that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market before alternate regulation may be implemented." The decision of this Commission should be based on §58-9-585 and should follow the framework of the Code section.

There was no direct evidence to prove competition within South Carolina, and I certainly do not believe that the rest of the case that was presented was sufficient to prove competition as required by the statute. Dr. R. Glenn Rhyne, Manager of the Research Department at the Commission, specifically stated that "in Staff's opinion, there was not sufficient market data and information to conduct a complete analysis of the conditions and trends of competition on an intrastate basis for AT&T's business services within South Carolina." (Prefile Testimony of Rhyne, p. 3, line 25 to p. 4, line 4.) Before this Commission may grant such relaxed regulation to an interexchange carrier, the statute requires a threshold determination of competition for the services concerned. AT&T's application should have been denied prima facie since AT&T clearly did not meet its burden of proof of showing

competition. The Commission's decision is inconsistent with the filing itself and a proper reading and application of the statute.

The Legislature of South Carolina intended for interexchange carriers to make an evidentiary showing of competition in a case such as this. The statute expressly mentions the requirement of competition in four of the six sections of §58-9-585. Section (B) further mandates the minimum considerations to be utilized when exploring the question of competition. I believe the Commission's decision ignores the legislature's intent, and I cannot acquiesce this departure from the statute.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'W D Arthur', written over a horizontal line.

Warren D. Arthur, IV
Commissioner, Sixth District